

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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March 2, 2006

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Subjects: ***In re Daniel Ray Gukeisen***
Chapter 7; Bankr. No. 04-50103

Dear Counsel:

The matter before the Court is Trustee Dennis C. Whetzal's Motion for Order Directing Clerk of Court to Discharge Judgment Voided in Bankruptcy. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, Trustee Whetzal's motion will be denied.¹

Pursuant to S.D.C.L. § 15-16-21, "[a]ny person interested in securing the discharge of any judgment under the provisions of [S.D.C.L.] § 15-16-20 shall present his application therefor to the court having jurisdiction of the matter." The reference to "[a]ny person" might lead one to believe literally anyone could file such a motion. However, "under the provisions of § 15-16-20," only

[a] person discharged in bankruptcy may file in the office of each clerk of court in which a judgment has been rendered or a transcript thereof filed against him, a certified copy of any bankruptcy court order specifying any judgment discharged in bankruptcy.

¹ The relevant facts are not in dispute. The issue presented is purely a question of law. Thus, no hearing was held.

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S.D.C.L. § 15-16-20. The references to "[a] person discharged in bankruptcy" and "a judgment rendered . . . against him" make it clear only a debtor has standing to bring a motion to discharge judgments under §§ 15-16-20 and 15-16-21. This conclusion is bolstered by the fact § 15-16-21 is titled, "Application by bankrupt for discharge of judgment - Contents and filing."

Trustee Whetzal is not a person discharged in bankruptcy, and the judgment described in his motion was not rendered against him. He thus lacks standing to bring a motion to discharge judgments under S.D.C.L. §§ 15-16-20 and 15-16-21.

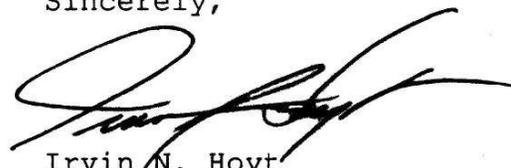
That is not to say the judgment described in Trustee Whetzal's motion has not been voided. Section 524(a)(1) of the Bankruptcy Code provides:

- (a) A discharge in a case under this title -
 - (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived[.]

Section 524(a)(1) does not require the debtor to do anything to void a judgment. The discharge *automatically* voids any judgment that represents a determination of the debtor's personal liability for a debt that has been discharged. However, any motion to remove such a judgment from the records of the clerk of court for the county in which it was docketed must be filed by the debtor.

The Court will enter an appropriate order.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

cc: case file (docket original and serve parties in interest)

On the above date, a copy of this document was mailed or faxed to the parties shown on the Notice of Electronic Filing as not having received electronic notice and Debtor(s), if Debtor(s) did not receive electronic notice.

Charles L. Nail, Jr.
Clerk, U.S. Bankruptcy Court
District of South Dakota

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered
on the date shown above.

Charles L. Nail, Jr.
Clerk, U.S. Bankruptcy Court
District of South Dakota